

Comment Summary and Responses
Malibu Creek Bacteria TMDL
Prepared for December 13, 2004 Regional Board Hearing

1: Los Angeles County DPW

| No. | Author | Date | Comment | Response |
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| 1-1 | Rod H. Kumomoto | 06/3/04 | <p>Comment on No Action Alternative (Alternative 1)</p> <p>The 10-foot separation from "historic groundwater requirement" is overly prescriptive and does not gibe with the most recent analysis of the appropriate margin between OWTSs and groundwater.</p> | <p>In areas of high groundwater elevations (i.e., Malibu Lagoon) the "historic groundwater requirement" is appropriate for protection of groundwater. The Regional Board staff does recognize that there will be instances where this requirement may be overly protective. However, the responsible agencies are allowed to demonstrate that the OWTS subject to the 10-foot requirement are not impacting surface waters.</p> |
| 1-2 | Rod H. Kumomoto | 6/3/04 | <p>Comment on No Action Alternative (Alternative 1)</p> <p>The requirement for the 250-foot setback from the 303(d) listed waterbody also fails to account for the type and depth of soil underlying the individual OWTS as well as the likelihood for hydraulic continuity between the discharge from the system and the waterbody in question.</p> | <p>The responsible agencies have the opportunity to demonstrate that the OWTS subject to the 250-foot setback are not impacting surface waters.</p> |
| 1-3 | Rod H. Kumomoto | 06/3/04 | <p>Comment on No Action Alternative (Alternative 1)</p> <p>The designation of systems as "high risk" if they are located "in areas</p> | <p>The responsible agencies have the opportunity to demonstrate that the OWTS located "in areas of documented nitrate or</p> |

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| | | | of documented nitrate or human bacteria problems in the surface or groundwater" is vague, ambiguous and overreaching. | human bacteria problems in the surface or groundwater" are not impacting surface waters. |
| 1-4 | Rod H. Kumomoto | 06/3/04 | <p>Comment on criteria based on plumbing code (Alternative 3)</p> <p>The 100-foot setback is more conservative than the already conservative 50-foot setback requirement established for leachfields.</p> | The 100-foot setback requirement is based on the language contained in the State plumbing code. Regional Board staff has not been presented with evidence that demonstrates that the 50-foot setback requirement is protective of water quality. |
| 1-5 | Rod H. Kumomoto | 06/3/04 | <p>Comment on criteria based on Plumbing Code (Alternative 3)</p> <p>The "point of discharge" is not clearly defined. If it means the point at which wastewater enters the leachfield, the requirement is overly prescriptive, as it would not take into account the filtering aspects of the soil matrix.</p> | The "point of discharge" is defined as the point at which wastewater enters the leachfield. This definition is consistent with the Plumbing Code. |
| 1-6 | Rod H. Kumomoto | 06/3/04 | <p>Comment on criteria based on plumbing code (Alternative 3)</p> <p>Existing technologies cannot uniformly achieve the bacteria objectives.</p> | Available technologies (e.g., disinfection) are capable of consistently achieving the REC-1 bacterial standards for groundwater. |
| 1-7 | Rod H. Kumomoto | 06/3/04 | <p>Comment on criteria based on plumbing code (Alternative 3)</p> <p>Public Works has particular concerns regarding the monitoring program required to exempt a resident from designation as the operator of a "high risk" OWTS. To gain such an exemption, the homeowner would have to embark on a program of groundwater monitoring or weekly surface water monitoring. This would require the homeowner to perform extensive record keeping, adhere to sampling protocols, and follow rigorous analysis and reporting requirements.</p> | Regional Board staff acknowledges that the monitoring and sampling requirements may be costly for an individual property owner and encourage the local agencies to coordinate regional monitoring programs that effectively gauge the impact of multiple clustered OWTS. Alternatively, OWTS may be upgraded to avoid monitoring. |

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| 1-8 | Rod H. Kumomoto | 06/3/04 | <p>Cost Considerations for Alternative 1 and 3</p> <p>The cost estimated for mound systems cited in the Final Staff report is based on a national cost estimate for rural systems.</p> <p>Mound systems may not be appropriate for the Malibu Creek watershed. In fact, the County generally will not permit mound systems. Upgrading could, therefore, involve the installation of such technologies as disinfection systems, which can range from \$12,000 to \$100,000 per residence.</p> | <p>Regional Board staff acknowledges that the cost estimates for mound system is based on a national estimate, and understands that cost will vary according to site-specific conditions. We also acknowledge that cost of implementation will vary based on the technology chosen for implementation.</p> |
| 1-9 | Rod H. Kumomoto | 06/3/04 | <p>Cost Considerations for Alternative 1 and 3</p> <p>Neither the Final staff report nor the April 16 draft staff report estimate the cost of groundwater monitoring for owners of designated "high-risk" OWTS nor the cost of weekly surface water monitoring.</p> | <p>The Final Staff report did consider the implementation cost (see Section 7.3) for a community wastewater treatment or monitoring system as an option to single family OWTS.</p> <p>The surface and groundwater water monitoring alternatives contained in Option 1 and 3 is for demonstrating that upgrades to the OWTS are not necessary.</p> <p>The Regional Board will weigh the burden including cost of monitoring against the need for information and the benefit if and before it requires monitoring pursuant to Water Code section 13267 and 13225.</p> |
| 1-10 | Rod H. Kumomoto | 06/3/04 | <p>Legal Issues: Water Code Section 13360</p> <p>By specifying the means of implementation with the TMDL by</p> | <p>Alternative 1 has been revised to remove the language, "subject to disinfection requirements." Alternative 3 is based on an</p> |

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| | | | requiring certain controls over septic systems in Alternative 1 and 3, the Regional Board would violate this section. | existing regulation, the California Plumbing Code. Both alternatives provide guidance for identifying "high-risk" areas for the purpose of prioritizing areas or OWTS for implementation of controls. |
| 1-11 | Rod H. Kumomoto | 06/3/04 | <p>Legal Issues: Water Code Section 13267</p> <p>We do not agree that extensive monitoring required under Alternatives 1 and 3 is appropriate under Section 13267, especially where there is no evidence that the OWTS in question has ever adversely impacted a waterbody with respect to bacteria.</p> | <p>The final staff report does provide evidence that demonstrates that OTWS within the Malibu Creek watershed may be contributing bacteria to impaired waterbodies within the watershed.</p> <p>The surface and groundwater water monitoring requirements contained in Alternative 1 and 3 are intended to give OWTS owners the opportunity to demonstrate discharge from their individual or clustered OWTS is not contributing to the impairment of a waterbody, and thus not subject to the upgrade requirements of the TMDL.</p> <p>In addition, Regional Board staff neglected to cite its authority under Water Code § 13225 to require monitoring. The TMDL and Basin Plan amendment documents will be revised to include a citation of Water Code § 13225 which gives the Regional Board the authority to "require as necessary any state or local agency to investigate and report on any technical factors involved in water quality control or to obtain and submit</p> |

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| | | | | analyses of water; provided that the burden, including costs, of such reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained therefrom." |
| 1-12 | Rod H. Kumomoto | 06/3/04 | <p>Legal Issues: Water Code Section 13241</p> <p>Water Code Section 13241 requires a regional board, when it establishes water quality objectives in water quality control plans, to consider among other items, "economic considerations." The resolution does not indicate that the Regional Board considered, or will consider, the factors set forth in Section 13241.</p> | The Regional Board will be considering for adoption, Tentative Resolution No. 2004-019R. Finding number 19 of the resolution states "With respect to this TMDL, economics were considered when the water quality objectives were originally adopted, and the TMDL implements these existing water quality objectives." |
| 1-13 | Rod H. Kumomoto | 06/3/04 | <p>Legal Issues: Provisions of CEQA</p> <p>The revised CEQA Checklist, which concluded that the TMDL could not have a significant adverse effect on the environment, is inadequate.</p> <p>As proposed, the TMDL potentially could require the upgrading of every OWTS located within 100 feet of every waterbody in the Malibu Creek watershed; it cannot be disputed that upgrading would require significant earth movement, the potential for earth erosion and other impacts. Thus, the Checklist is even less adequate due to its failure to discuss these additional impacts.</p> | The staff report for this TMDL does not support the assertion that " the TMDL potentially could require the upgrading of every OWTS located within 100 feet of every waterbody in the Malibu Creek watershed." The staff report estimate that approximately 20% to 30% of the OWTS within the watershed may be failing, and thus require upgrades. |
| 1-14 | Rod H. Kumomoto | 06/3/04 | As proposed, the TMDL potentially would require the upgrading of every OWTS located within 100 feet of every waterbody in the Malibu | Regional Board staff does believe the administrative record supports that the |

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| | | <p>creek watershed.</p> <p>The impacts noted above, and others in the Checklist, provide substantial evidence that there is a "fair argument" that the project has a significant impact on the environment. The Executive Officer's determination that the proposed Basin Plan amendment "could not have a significant adverse effect on the environment" is not supported by the Checklist itself or the administrative record before the Regional Board.</p> | <p>TMDL could not have a significant adverse effect on the environment.</p> |
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